

Article - Health - General

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§19–345.2.

(a) In addition to the provisions of §§ 19–345 and 19–345.1 of this subtitle, a facility may not involuntarily discharge or transfer a resident unless, within 48 hours before the discharge or transfer, the facility has:

(1) Provided or obtained:

(i) A comprehensive medical assessment and evaluation of the resident, including a physical examination, that is documented in the resident's medical record;

(ii) A post discharge plan of care for the resident that is developed, if possible, with the participation of the resident's next of kin, guardian, or legal representative in accordance with § 19–345.1 of this subtitle; and

(iii) Written documentation from the resident's attending physician indicating that the transfer or discharge is in accordance with the post discharge plan of care and is not contraindicated by the resident's medical condition; and

(2) Provided information to the resident concerning the resident's rights to make decisions concerning health care, including:

(i) The right to accept or refuse medical treatment;

(ii) The right to make an advance directive, including the right to make a living will and the right to appoint an agent to make health care decisions; and

(iii) The right to revoke an advance directive.

(b) Except as provided in subsection (d)(3) of this section, and at least 24 hours before discharge or transfer, the facility shall provide the resident and the resident's next of kin, guardian, or legal representative with:

(1) The written statement of the medical assessment and evaluation and written documentation from the resident's attending physician required under subsection (a) of this section;

(2) The post discharge plan of care developed under § 19–345.1 of this subtitle;

(3) The information necessary to assist the resident and the resident's next of kin, guardian, or legal representative in obtaining additional prescriptions for necessary medication through consultation with the resident's treating physician; and

(4) A written statement containing the date, time, method, mode, and destination of discharge.

(c) To the extent authorized under State and federal law, a facility shall provide at least a 3–day supply of medications currently being taken by the resident at the time of discharge or transfer.

(d) (1) Except as provided in paragraphs (2) and (3) of this subsection, a facility may not discharge or transfer a resident unless the resident is capable of and has consented in writing to the discharge or transfer.

(2) A facility may discharge or transfer a resident without obtaining the written consent of the resident for one of the reasons listed in § 19–345(a) of this subtitle if the discharge or transfer:

(i) Is in accordance with a post discharge plan of care developed under § 19–345.1 of this subtitle;

(ii) Is to the community in which the resident resided before becoming a resident of the facility unless the facility documents why it is in the best interest of the resident to be discharged to another location;

(iii) Is to another licensed provider, unless:

1. The resident is being discharged or transferred because the resident's health has improved sufficiently and the resident no longer needs the services provided by the facility;

2. The resident has no pending application to the medical assistance program or is ineligible for the medical assistance program and is being discharged or transferred for nonpayment under § 19–345(a)(4) of this subtitle; or

3. If the resident is or may be eligible for the medical assistance program:

A. The facility has fulfilled its obligation under § 19–344(c) of this subtitle to cooperate with and assist the resident or the resident’s representative in seeking assistance from the medical assistance program and has documented the cooperation and assistance;

B. The resident or resident’s representative has refused to apply for or seek assistance from the medical assistance program or has repeatedly failed, despite the facility’s documented assistance, to make good–faith efforts to supply information or materials necessary for the medical assistance program to enroll the resident; and

C. The resident is being discharged for nonpayment under § 19–345(a)(4) of this subtitle; and

(iv) Is to a safe and secure environment.

(3) A facility that is certified as a continuing care provider under Title 10, Subtitle 4 of the Human Services Article is not subject to the provisions of subsection (b) of this section if:

(i) The facility transfers a resident to a lesser level of care within the same facility in accordance with a contractual agreement between the facility and the resident; and

(ii) The transfer is approved by the attending physician.

(e) (1) If the requirements of §§ 19–345 and 19–345.1 of this subtitle and subsections (a) and (b) of this section have been met, the resident’s next of kin or legal representative shall cooperate and assist in the discharge planning process, including:

(i) Contacting, cooperating with, and assisting other facilities considering admitting the resident; and

(ii) Cooperating with governmental agencies, including meeting the requirements of § 19–344(c) of this subtitle to seek and pursue with due diligence assistance from the medical assistance program.

(2) A facility may, without requesting the appointment of a guardian, petition the appropriate circuit court for an order or injunction directed at the resident or agent of the resident for appropriate relief to enforce this subsection.

(f) If requested by any person during the process of transferring or discharging a resident or on its own initiative, the Office of the Attorney General may

investigate whether an abuse of funds under § 19–346 of this subtitle contributed to the decision to transfer or discharge the resident and may make appropriate referrals of the matter to other government agencies.

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